$
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Judgment reserved on*: 12.05.2026*
Judgment delivered on*: 03.07.2026*
Judgment uploaded on*: As per Digital Signature~*

\+ **LPA 550/2013**

PYARE LAL (SINCE DECEASED) THR LRS .....APPELLANTS

versus

DELHI TRANSPORT CORPORATION .....RESPONDENT

Advocates who appeared in this case

For the Appellants	:	Mr. Arun Bhardwaj, Senior Advocate with Mr. Pranava Rastogi and Ms. Ashu Tiwari, Advocates.
For the Respondent	:	Ms. Avnish Ahlawat SC, DTC, Mr. Uday Singh Ahlawat, Ms. Tania Ahlawat, Mr. Nitish Kumar Singh, Mr. Nitesh Kumar Singh, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

V. KAMESWAR RAO, J.

1. This appeal lays a challenge to the order dated 05.10.2012 passed by the learned Single Judge in W.P.(C) No.17192/2006 whereby the learned Single Judge has allowed the writ petition filed by respondent/ Delhi Transport Corporation (in short 'Corporation') challenging the orders dated

07.05.1997 and 11.02.1999 (impugned orders) passed by the learned Presiding Officer: Industrial Tribunal-II, Tis Hazari Courts, Delhi (Presiding Officer) in OP No. 245/1993. The Presiding Officer vide the impugned orders held that proper enquiry was not conducted by the Corporation and thus he dismissed the approval application under Section 33(2) (b) of the Industrial Disputes Act, 1947 (the Act) as the deceased employee - Pyare Lal was not guilty of the misconduct regarding the unauthorised absence because the absence period was treated as 'leave without pay'.

2. At the outset, we may state the employee Pyare Lal had expired and the petition was filed against the legal representatives of the deceased Pyare Lal, who are the appellants herein.

3. The learned Single Judge while allowing the petition filed by the Corporation has noted the relevant facts in as much the deceased employee Pyare Lal was appointed as a driver by the Corporation on 23.05.1977. On 27.04.1979, the deceased employee was absent from the duty and was accordingly cautioned. Similar was the position on 30.08.1984 and also on 25.09.1989 when he was again absent from 07.06.1989 to 28.08.1989. He again absented from the duty on 20.05.1990 and was advised. He availed 61 days leave without pay for the period from January to April, 1991 and was accordingly advised on 03.05.1991. In the year 1991 he availed 107 days leave without pay for which the penalty of stoppage of next due increment with cumulative effect was imposed. In the month of February, 1993 the deceased employee was issued a charge sheet as he was absent without permission for 22 days, which amounts to misconduct.

4. The deceased employee did not reply to the charge sheet. He was called to appear in the proceedings on 02.03.1993, but he did not join the same. He was again informed vide letter dated 03.03.1993 to appear in the enquiry on 09.03.1993, but he did not appear. Even on 10.03.1993 he was intimated to appear in the proceedings scheduled on 16.03.1993. But on that date also the deceased employee was absent. Finally, the Enquiry Officer had submitted his report on 19.03.1993 wherein he proved the charges against the deceased employee.

5. After issuance of the show cause notice dated 23.03.1993, the penalty of removal from service was imposed on the deceased employee on 27.04.1993. On the said date, the respondent-corporation remitted one month's wages and filed an application under Section 33(2) (b) of the Act, which was registered as OP No.245/1993. The Corporation produced the record of the proceedings as well as the past record of the deceased employee.

6. A preliminary issue was framed by the Presiding Officer on the validity of the domestic enquiry conducted by the Corporation, which resulted in the order dated 07.05.1997 whereby the Presiding Officer has held as under:-

> *"In this case, the applicant in support of its prayer for granting removal of the respondent from its service to had relief upon a departmental enquiry at fist instance and a preliminary issue was framed about the validity of the enquiry as the respondent had challenged the same. Since it was for the applicant to establish that before ordering the removal of the respondent form its service it had conducted a proper enquiry and it having failed to adduce any*

evidence it has to be held that no proper enquiry was held by the applicant, therefore, preliminary issues decided against the respondent.

However, in view of the fact that applicant had also prayed for an opportunity for adducing evidence before this tribunal to establish the alleged misconduct in the event of the preliminary issue being decided against it has to be given that opportunity. Accordingly, the following issues are framed :-

1. Whether the respondent committed the misconduct for which he was charge sheeted?

2. Relief.

Put up for evidence of the applicant on the issue framed today by way of affidavit on 10.7.97."

7. The Presiding Officer while dismissing the application under Section 33(2) (b) of the Act vide order dated 11.02.1999, *inter alia*, held as under:-

"That management sole witness Sh. Ramesh Chand, on whose report disciplinary proceedings were initiated against the respondent, stated in his examination that the respondent had remained absent from duty unauthorisedly for the period in dispute. However, in his cross examination this witness of the management admitted that the entire period of absence of the respondent had been treated as leave without pay. The witness stated that "It is correct that the entire period of absence of 214 days had been treated as leave without pay as mentioned in Ex. AW 1/1. The period of absence of 22 days is included in the total period of 214 days. Similarly the period of absence of 107 days in the year 1991 was treated as "Leave Without Pay." These answers given by the management's witness clearly establish that the respondent was not guilty at all of any misconduct. It is now well settled that if an employer treats the period of absence of any employee as leave without pay there remains no misconduct on the part of that employee. This has been so held by Andhra Pradesh High Court in a judgment reported in AIR 1976 A.P. 75. Therefore, the decision of the

management for the removal of the respondent from its service cannot be said to be bonafide and cannot be accorded approval by this tribunal."

8. The learned Single Judge in the challenge made by the Corporation while allowing the writ petition has in paragraph 5 onwards held as under:-

"5. The Respondent did not reply to the charge-sheet. He was called for the domestic enquiry on the 2nd March, 1993 but he did not appear. Despite repeated intimation he did not appear and finally on the basis of the report of the enquiry officer a show cause notice was issued to the Respondent on 23rd March, 1993. The Respondent did not even reply to the said show cause notice and finally he was removed from service on 27th April, 1973. He was simultaneously remitted one month's wages and an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short the ID Act) was filed before the learned Trial Court for approval of its action as an industrial dispute concerning DTC workers for demand of implementing Fourth Pay Commission's report was pending adjudication. The Respondent opposed the application and challenged the validity of the enquiry report. A preliminary issue regarding the validity of the domestic enquiry conducted by the Petitioner was framed. The preliminary issue was decided against the Petitioner vide order dated 7th May, 1992 and it was held that the enquiry was not fair and just and contrary to the principles of natural justice. However, the Petitioner was given opportunity to adduce evidence before the Trial Court to establish the misconduct of the Respondent. Thus, management produced its witness Shri Ramesh Chand on whose report disciplinary enquiry was conducted. AW1 Ramesh Chand tendered his evidence by way of affidavit Ex.AW1/A and the documents AW1/1. AW1 also placed on record the dates on which the Respondent was absent in the form of leave statement. It also stated that the enquiry officer had since retired from the Corporation and the enquiry was conducted as per rules and the principles of natural justice and despite sufficient

opportunity, the Respondent failed to defend himself or appear before the enquiry officer. In the cross-examination of AW1 it was admitted that the entire period of absence of 214 days has been treated as leave without pay as mentioned in Ex.AW1/1. It was also stated that the period of absence of 107 days in the year 1991 was also treated as leave without pay. The learned Trial Court in view of the admission of the witness that the entire period of absence of 214 days has been treated as leave without pay and even period of absence of 107 days in the year 1991 was treated as leave without pay, came to the conclusion that the Respondent was not guilty at all of any misconduct.

6. The Hon'ble Supreme Court in State of Madhya Pradesh Vs. Harihar Gopal (supra) held:

> *"7. It was urged before the High Court on behalf of the State that the order granting leave was only for the purpose of regularizing the absence from duty and for maintaining a true account of absence from duty, and had not the effect of first sanctioning leave to the respondent to which he was entitled, and then removing him from service for absence from duty. The High Court rejected this contention observing: "…….when the leave was granted even though belatedly, it had the effect of authorizing with retrospective effect the petitioner's (respondent's) absence from duty during the period for which it was sanctioned. Having thus authorized the petitioner's (respondent's) absence from duty, it was not open to the State Government to proceed on the basis that his absence was unauthorized." These observations proceed upon a misconception of the sequence in the orders passed by the State Government and the true effect of the order granting leave. The order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of the duration of service, and adjustment of leave due to the respondent and for regularizing his absence*

from duty. Our attention has not been invited to any rules governing the respondent's service conditions under which an order regularizing absence from duty subsequent to termination of employment has the effect of invalidating termination. Both the orders, one terminating the employment of the respondent, and the other granting leave are made "by order and in the name of the Governor of Madhya Pradesh", and they are signed by L.B. Sarje, Deputy Secretary to the Government of Madhya Pradesh, General Administration Department. We are unable to hold that the authority after terminating the employment of the respondent intended to pass an order invalidating the earlier order by sanctioning leave so that the respondent was to be deemed not to have remained absent from duty without leave duly granted.

8. There is another aspect of the case which also does not appear to have been considered by the High Court. The charge against the respondent was that he had absented himself "without obtaining leave in advance". The Enquiry Officer characterized the conduct of the respondent as "irresponsible in extreme and can hardly be justified." The Enquiry Officer clearly intended that in failing to report for duty and remaining absent without obtaining leave, the respondent had acted in manner irresponsible and unjustified. On the finding of the Enquiry Officer that charge was proved and the order, dated March 9, 1962, had no effect on the charge that the respondent had remained absent without obtaining leave in advance."

7. Further in Delhi Transport Corporation Vs. Sardar Singh (supra) their Lordships held:

"11. Great emphasis was laid by learned counsel for the respondent- employee on the absence being treated as leave without pay. As was observed by this Court in State of Madhya Pradesh v. Harihar

Gopal 1969 (3) SLR 274 by a three-judge Bench of this Court, even when an order is passed for treating absence as leave without pay after passing an order of termination that is for the purpose of maintaining correct record of service. The charge in that case was, as in the present case, absence without obtaining leave in advance. The conduct of the employees in this case is nothing but irresponsible in extreme and can hardly be justified. The charge in this case was misconduct by absence. In view of the Governing Standing Orders unauthorized leave can be treated as misconduct.

12. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of Para 4 of the Standing Order shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorized.

13. The Tribunal proceeded in all these cases on the basis as if the leave was sanctioned because of the noted leave without pay. Treating as leave without pay is not same as sanctioned or approved leave."

8. Thus, in view of the law laid down by the Supreme Court, even if the absence is treated as leave without pay, the same does not absolve the employee of his misconduct of absence. Thus, the learned Trial Court grossly erred in holding the same to be not a misconduct.

9. Learned counsel for the Respondent has further stressed that when the impugned award was passed the law laid down by the Supreme Court in DTC Vs. Sardar Singh was not applicable and thus the decision rendered was not

contrary the law. It may be noted that the decision of the Trial Court is clearly contrary to the earlier decision of the Supreme Court in case of State of M.P. Vs. Harihar Gopal (supra) and thus this contention of the learned counsel for the Respondent holds no ground. As regards the next contention of the learned counsel for the Respondent that the charges are vague, it may be noted that in the present case a leave statement was placed on record. The dates on which the Respondent was absent need not and could not have been spelt out in the charge framed against the Respondent. The same was enclosed and placed before the Trial Court. Thus, there was sufficient notice to the Respondent for the case he had to meet. The decision rendered in Union of India & Ors. Vs. Gyan Chand Chattar has no application to the facts of the case as in the said case their Lordships were dealing with the charges of corruption and in that respect their Lordships held that the serious charges of corruption are required to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. In Bharat Petroleum Corporation Ltd. (supra) their Lordships held that when details were given in the charge the High Court was wrong in coming to the conclusion that the charges were vague and indefinite. In Management of Northern Railway Cooperative Credit Society Ltd. (supra) the charges against the Respondent therein were to instigate and conspire to paralyse the working of the society, disobedience of orders in not attending for Medical Examination, taking part in the issue and distribution of certain leaflets issued etc., thus it was held that the charges were vague as no specific dates or incidents were given.

10. In the present case the charges informed the period i.e. the number of days the Respondent has been absent during the year, hence the same cannot be said to be vague. In view of the aforesaid discussion the order of termination by the Petitioner does not suffer from any illegality and the regularization of leave without pay is only for the purpose of maintaining correct record of service which does not

interfere nor obliterate the order of dismissal from service.

11. As regards the contention of the learned counsel for the Respondent regarding delay in filing the writ petition, it may be noted that in writ petition, sufficient cause for delay has been explained. Ordinarily, a writ petition filed after three years should not be entertained though no period of limitation is prescribed. However, where sufficient cause is explained which in this case is due to negligence of the counsel, a belated writ petition can be entertained. In Devendra Swami (supra) it was held:

> *"5. Having heard the learned counsel for the parties, we are satisfied that in the facts and circumstances of this case, the Division Bench did not err in condoning the delay in filing the appeal. The lawyer engaged by the respondent Corporation was holding the papers and did not inform the Corporation of the decision in the writ petition. The Corporation, having felt convinced of the default on the part of the lawyer, removed him from the panel of the Corporation and engaged another counsel through whom the writ appeal was filed. Sufficient cause for condoning the delay in filing the appeal was made out. Discretion to condone delay under Section 5 of the Limitation Act has been judiciously exercised by the High Court, placing reasons on record and is not open to interference by this Court."*

12. In view of the aforesaid discussion, I find that the impugned order dated 11th February, 1999 of the Trial Court is contrary to the law laid down by the Hon'ble Supreme Court. The same is set aside. The approval application is decided in favour of the Petitioner. Petition is disposed of accordingly."

9. It may stated here that the primary ground on which the Presiding Officer has refused to grant the approval to the penalty of removal under Section 33(2)(b) of the Act was essentially that the deceased employee was

not guilty of any misconduct. This according to the Presiding Officer is because the period of the absence was decided as leave without pay, as such there remains no misconduct on the part of the employee. The learned Single Judge has by referring to the decisions of the Supreme Court in the cases of ***State of Madhya Pradesh v. Harihar Gopal, 1969 SLR 274*** and ***Delhi Transport Corporation v. Sardar Singh, 2004 (6) SCALE 613***, wherein it is held even if the absence is treated as leave without pay, the same does not absolve the employee of misconduct or lapses. In that sense, the conclusion drawn by the Presiding Officer was contrary to the law laid down by the Supreme Court.

10. We agree with the said conclusion drawn by the learned Single Judge. One of the submissions made on behalf of the deceased employee was that the charges are vague. In that regard, the learned Single Judge noted that the dates on which deceased employee was absent, need not and could not have been spelt out in the charges framed against him, and the same was enclosed and placed before the Presiding Officer. It follows, there was sufficient notice to the deceased employee on the charge he had to meet. It was also held by the learned Single Judge that the charges contained the information including the period i.e., the number of days on which the deceased employee was absent during the year. In that sense also the charges cannot be said to be vague.

11. In view of the limited challenge made before the learned Single Judge, to the order of the rejection of the application filed by the Corporation under Section 33(2)(b) of the Act; we are of the view that the learned Single Judge is justified in the facts of this case to set aside the order

passed by the Presiding Officer. Further the deceased employee was given proper opportunity to defend himself and merely because the leave was without pay shall not mean that, the leave which was not sanctioned is not a misconduct.

12. No interference is called for with the impugned order passed by the learned Single Judge.

13. The appeal being bereft of merit is dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

JULY 03, 2026
M